

far short of this heavy burden. Even if the Employer is believed to have met its burden, there is no question that the grievant's position must prevail due to the unconscionable, reckless, malicious, intolerable and outrageous actions towards the grievant which forced her actions of January 22, 1988. These actions were communications uttered to the hundreds of thousands of listeners of WBZZ and implied that the grievant had engaged in indiscriminate oral sex with large numbers of persons; that she is promiscuous; has sexually transmittable diseases; and is an otherwise loose woman. The grievant testified that she forcefully communicated to the disc jockeys, to her program director and others of the terrible health consequences which these statements were causing her. Dr. David Orbison testified on behalf of the grievant that in his expert opinion that due to the outrageous actions of Quinn and Banana over the two year period from February 1986 to January 1988, she was experiencing an increasing deterioration in her self-esteem, that these actions caused her to suffer panic attacks and these panic attacks rendered her unable to perform her duties at WBZZ. The grievant's leaving the station on January 22, 1988, was caused by the malicious, unconscionable and outrageous actions of WBZZ's employees. It is difficult to imagine a more outrageous case of inhumane treatment towards an individual.

FINDINGS AND DISCUSSION

Because of the unique nature of the radio entertainment business and its dependency on ratings, the Employer must be accorded wide latitude in being able to change on short notice the format of its programming as well as accompanying personnel in an effort to find a larger audience. Because of this, the Collective Bargaining Agreement permits the "termination" of announcers on a non-cause basis. In exchange for this ability to make personnel changes, the Employer has agreed to provide a minimum number of weeks of notice or the corresponding salary in lieu of such notice. However, an exception exists to this severance notice/pay in situations where the employee is guilty of flagrant neglect of duty, drunkenness, dishonesty or other serious cause. Under these circumstances, a staff announcer's employment may be terminated without the severance notice/pay.

The precipitating event in the within grievance was Ms. Randolph's leaving the radio station on the morning of January 22, 1988, without completing her final two on-air news reporting segments as well as other miscellaneous duties required that day. Arbitral law abhors such self help on the part of employees and dictates that under most circumstances, any dispute or disagreement an employee might have with his employer is to be processed through the grievance procedure. The obvious purpose of this rule is to prevent an employee's rash action from disrupting the Employer's business. Therefore, unless the grievant can prove the existence of some justifiable or

mitigating circumstances that would permit her to avoid using the grievance process and resort to self-help by walking off the job, the Employer will have sustained its burden of proving that her actions were, in fact, a flagrant neglect of duty.

Arbitrators often deny or limit requested relief, notwithstanding the merits of the original complaint, where the grievant has resorted to self-help rather than to the grievance procedure. An important exception to the general rule of "obey and grieve" exists where obedience to orders would involve an unusual health hazard or similar sacrifice. However, such exceptions are viewed quite narrowly and must be supported by clear and convincing evidence. The Employer has raised some substantial questions as to the existence of this health hazard exception offered by the grievant. However, other possible exceptions to the duty to obey orders exist under circumstances where the order commands the performance of an immoral act, or would humiliate the employee or invade some personal right which is considered inviolable. Therefore, let us closely examine the events that transpired within to determine whether such an exception exists.

I agree with the argument put forth by the Employer that the individuals involved in this grievance are in the entertainment business, which differs considerably from the normal industrial work environment. It is also clear that the grievant was required to be involved in banter and interplay with the other on-air talent. I believe that the grievant knew of and accepted

the fact that she must participate to some degree in this type of arrangement. The evidence also reflects that the grievant willingly participated in the "banter" at various times even to the degree that during the program on Halloween she wore a revealing/risque costume to work.

However, I find that the banter/interplay the grievant was subjected to (as detailed in the Background section of this opinion) goes well beyond anything that could even remotely be considered part of one's job requirement. The jokes and suggestive remarks that were directed to her were lewd, offensive, sophomoric, in bad taste and beyond anything that an employee should have to be subjected to--even if they are part of an "entertainment vehicle". Fortunately or unfortunately (depending on one's perspective) the First Amendment protects such forms of expression from censorship. Constitutional protections, however, do not mean that an individual of reasonable sensibilities must be unwillingly bombarded or subjected to such forms of free speech, at least not as a mandated job requirement or within the confines of one's work environment. I find a parallel exists in this situation with circumstances that precipitated and are now governed by the Federal Government's Sexual Harassment Laws. An employee no longer has to put up with a hostile work environment that is created on the basis of sex, be it in the form of jokes, comments, suggestions, touching, etc.

I am sure that on the occasions the grievant willingly

participated in some mild risqué bantering, she did so either because she wanted to or, as is more often the case, because she wanted to fit in and go along with the crowd. Such participation, however, in no way waives her right to object to the extremely outrageous remarks publicly directed to her nor makes her fair game for such insults. One must keep in mind these comments were not just made around the office or shop floor, as is normally the case. They were publicly broadcast to the thousands of people who listen to "The Quinn and Banana Show". The Employer argues that the highly suggestive remarks of the disc jockeys continued for quite some time, so one must question why the need for self-help arose at this point and why a grievance was not filed earlier. I believe one very plausible explanation exists, i.e., the vile and filthy joke perpetrated upon the grievant on January 22, 1988, was, in fact, the straw that broke the camel's back.

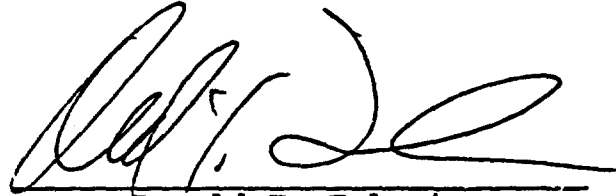
There is no question, under these circumstances, that the grievant's action of walking off the job was not only understandable, but more importantly, was justifiable. The conduct on the part of the disc jockeys was degrading, humiliating and a serious invasion of her personal rights and dignity. I would find it unreasonable to require the grievant to have remained on the job after being subjected to such vile and lewd insults and be expected merely to file a grievance. These circumstances are a narrow exception to the self-help rule and justify the grievant's actions.

Finally, I believe that the Employer was aware of or at least strongly suspected the grievant's negative reaction to these on-going lewd comments because of the general manager's reaction to the situation on the morning of January 22, 1988. When arriving at the station and learning that the grievant walked off in anger, the general manager did something I view as extremely drastic and unusual. He immediately pulled the two disc jockeys off the air. I find it very strange that he would abruptly stop an on-going program over an incident that the audience was certainly not aware of, and under circumstances where his investigation could have waited until the program was over. In fact, by abruptly stopping the program, the general manager is certainly sending a message to the audience that something was wrong, under circumstances where there was no immediate need to even hint that trouble existed. This implies to me that he knew of the on-going seriousness of the situation and the tension between the grievant and the disc jockeys, and he realized the time had finally come when the straw broke the camel's back.

AWARD

The grievance is sustained. The grievant is to receive payment for all severance benefits to which she is entitled together with interest at the rate of 6% per annum from February 5, 1988.

DATE: Nov. 16, 1988
Pittsburgh, Pennsylvania


Ronald F. Talarico
Arbitrator

Allegheny Communications Group, Inc.
(Allegheny)
Exhibit No.4
MM Docket No. 93-88

OPINION DATED OCTOBER 16, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EZ COMMUNICATIONS, INC.,
WBZZ-FM,

Plaintiff

vs.

AMERICAN FEDERATION OF
TELEVISION AND RADIO
ARTISTS,

Defendant.

Civil Action 88-2636

FEDERAL COMMUNICATIONS COMMISSION

Docket No. 93-88 Exhibit No. Page #4

Presented by ACB Identified 10/13/93

Disposition: Received _____
Rejected _____

Reporter Dr. KERNER
Date 10/13/93

Civil Action 88-2636

Randolph was employed by plaintiff as a news director for WBZZ-FM from 1985 until January, 1988. Her duties included reading the news twice during each hour of "The Quinn and Banana Show," a morning radio show featuring disc jockeys and local radio personalities, Jim Quinn and "Banana" Don Jefferson. It

is common practice for disc jockeys to engage in humorous exchanges with various reporters on the shows and Quinn and Banana often joked with Randolph while on the air. However, in 1986, Quinn and Banana began to recite tasteless, sexual quips about Randolph on the air while she was on vacation. The statements suggested that Randolph was sexually promiscuous and that she had sexually transmitted diseases, albeit in a joking manner.

As a result of the outrageous jokes directed at her, Randolph experienced anxiety attacks, difficulties in functioning on the air and working with Quinn and Banana in general. She was eventually admitted to a hospital due to the emotional trauma she suffered as a result of the ridicule. Thereafter, the on-the-air joking included jokes concerning Randolph's mental status, suggesting that she was instable, in addition to suggestions that she was sexually indiscriminate.

Attempts by Randolph to bring this shoddy treatment to an end by discussing her displeasure with superiors at the station were ineffective. Finally, on January 22, 1988, during the "Friday Morning Joke-Off" segment of the "Quinn and Banana Show," a disc jockey from a sister station to WBZZ-FM in St. Louis, Missouri, called the station on the air and made Randolph the butt of his joke, which referred to oral sexual activity in an offensive manner. The joke was played back for Randolph by Quinn or Banana just before she was to do a news report on their

show. Randolph became too distraught to perform and left the station.

Later that day, Randolph returned to the station to resume her news duties, but she was placed on leave of absence pending an investigation. One week later, Randolph's employment was terminated for flagrant neglect of duty related to her sudden departure from the station on January 22, 1988. As a result of her termination for what plaintiff alleges to be just cause under the collective bargaining agreement, plaintiff denied the claim of Randolph for severance pay.

Presently before the court are the cross motions of the parties for summary judgment. EZ Communications contends that the arbitrator exceeded his authority in numerous respects. Defendant disagrees. In keeping with well established principles of federal labor law, the arbitrator's award must be sustained so long as it "draws its essence from the collective bargaining agreement." Graphic Arts International Union v. Haddon Craftsmen, 796 F.2d 692, 694 (3d Cir. 1986).

The arbitrator interpreted the relevant portions of the collective bargaining agreement as an agreement by the employer to pay announcers severance pay unless the employee is guilty of "flagrant neglect of duty, drunkenness, dishonesty or other serious cause." Plaintiff's Exhibit E at 10; Plaintiff's Exhibit A, Schedule 1, B. Staff Working Conditions at ¶ 7.

EZ Communications does not dispute the interpretation of the agreement in this regard. Rather, plaintiff asserts that

Randolph is not entitled to severance pay because the act of leaving the premises of WBZZ-FM on January 22, 1988, without performing newscasts, constituted a flagrant neglect of her duties and that, if she felt that she was being subjected to sexual harassment on the job, she was required to file a formal grievance rather than resort to self help by walking off the job.

The arbitrator disagreed with plaintiffs' characterization of Randolph's conduct on January 22, 1988, for which she was terminated. He found that " . . . the vile and filthy joke perpetrated upon the grievant on January 22, 1988, was, in fact, the straw that broke the camel's back." Plaintiff's Exhibit E at 13. The arbitrator further found that the employer was aware or at least strongly suspected that Randolph was offended by the on-air jokes made by Quinn and Banana at her expense. Plaintiff's Exhibit E at 14. The arbitrator concluded that " . . . the grievant's action of walking off the job was not only understandable, but more importantly, was justifiable . . . I would find it unreasonable to require the grievant to have remained on the job after being subjected to such vile and lewd insults and be expected merely to file a grievance." Plaintiff's Exhibit E at 13.

An arbitrator exceeds his authority whenever he substitutes his own notions of industrial justice for the terms of the parties' agreement. Pennsylvania Power Company v. Local Union #272 of the International Brotherhood of Electrical Workers, AFL-CIO, No. 89-3036 (3d Cir. September 22, 1989). In

our view, the arbitrator had authority bottomed in the bargaining agreement to find that the act of walking off the job was neither a flagrant neglect of Randolph's employment duties nor was she required to file a formal grievance to protest the degradation to which she was exposed as a result of the insensitivity of other employees of plaintiff.

The Supreme Court has defined our meager authority to review the award of the arbitrator, under the circumstances:

Courts . . . do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. To resolve disputes about the application of a collective bargaining agreement, an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them. The same is true of the arbitrator's interpretation of the contract. The arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract.

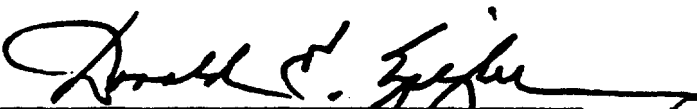
United Paperworkers International Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987).

While EZ Communications argues that the arbitrator exceeded his authority in issuing the award, we find that plaintiff is in fact seeking a review of the merits of the award which was based on a reasonable interpretation of the contract. Id. at 36. The arbitrator properly interpreted the contract and applied that interpretation to the facts presented. If we were to second guess his reasonable construction, we would exceed our authority and scope of review. Id.; See also United States

Postal Service v. National Association of Letter Carriers, 839
F.2d 146 (3d Cir. 1988). The motion of plaintiff for summary
judgment will be denied, and defendant's motion will be granted.

A written order will follow.

DATED: October 16, 1989


Donald E. Ziegler
United States District Judge

cc: Counsel of record.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EZ COMMUNICATIONS, INC.,
WBZZ-FM,

Plaintiff,

vs.

AMERICAN FEDERATION OF
TELEVISION AND RADIO
ARTISTS,

Defendant.

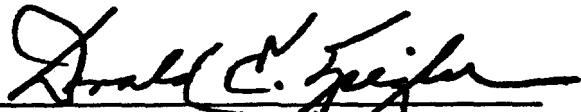
Civil Action 88-2636

ORDER OF COURT

AND NOW, this 16th day of October, 1989,

IT IS ORDERED that the motion of plaintiff for summary judgment be and hereby is denied;

IT IS FURTHER ORDERED that the motion of defendant for summary judgment be and hereby is granted.


Donald E. Ziegler
United States District Court

cc: Counsel of record.

Allegheny Communications Group, Inc.
(Allegheny) Exhibit No. 5
MM Docket 93-88

COMPLAINT LETTERS FILED WITH FEDERAL
COMMUNICATIONS COMMISSION RE STATION
WBZZ (FM), PITTSBURGH, PA

<u>Complainant and Date of Letter</u>	<u>Pages</u>
John and Barbara Knezovich March 28, 1990	2-3
Judy Holden January 25, 1988	4
Bob Willison February 22, 1988	5
Dr. Kutub M. Saifee April 14, 1989	6
William Barkschat July 27, 1989	7
Martina Finley February 8, 1990	8
Kathleen Jacobs February 21, 1990	9-11
Evelyn L. McAbee February 19, 1990	12
Audrey Casperson	13
Douglas Marvin February 17, 1990	14
David M. Witners February 18, 1988	15

64 - 101

APR 3 10 41 AM '90

AIR MAIL 4CES

2504 Milburn Street
McKeesport, PA 15132
March 28, 1990

RECEIVED
COMMUNICATIONS SECTION
APR 4 '90

Mass Media Bureau
1919 M Street, N.W.
Washington, DC 20556

To Whom it May Concern:

I have a complaint against FM Radio Station WBZZ (B-94-FM) located at 1715 Grandview Avenue in Pittsburgh, Pennsylvania. My specific complaint is addressed to an incident that occurred between 7:00 a.m. and 7:30 a.m. on Monday, March 26, 1990. The two disc jockeys involved are Jim Quinn and "Banana" Don Jefferson, along with their producer Mark Snyder. The incident involved the producer going out to a neighboring Pittsburgh community and recruiting a female, who for \$50 would allow a recruited male to suck her toes. The recruited male was then instructed to suck each individual toe to receive \$50 as well, to which he replied that he wanted more than \$50, so the disc jockeys then threw in tickets for a Patti LaBelle concert. The two disc jockeys, through the producer on site of the incident, interviewed the male and female and asked what this toe-sucking experience was like for them.

I feel this skit was in very poor taste and is furthermore not appropriate for the teen or preteen who is the listening audience to which WBZZ is marketed. It is not funny, but gross and disgusting. The radio station goes too far in using gimmicks that are shocking, disgusting, kinky and leaning to soft porn over the air waves to attract a young listening audience.

This is only the most recent event that causes me to be outraged at irresponsible media. Every Friday morning, these same disc jockeys sponsor a Joke-Off, where listeners call in their jokes and the winner is awarded a prize. The jokes that are allowed to be aired are often ethnic slurs, sacrilegious or with sexual overtones that should not be permitted on any radio station.

My major concern is that I have three children, ages 11, 13 and 14, and they enjoy the top 40 music played on WBZZ. When the music selections are interspersed with morally offensive dialogue, I feel it is wrong for these children to be exposed to this type of language and behavior. Children today are bombarded with other types of media that can be morally offensive. As a parent, it is my job to screen the television programs, movies and literature they view and read. These medias are tangible

enough that I can exercise control. The radio media is not so tangible; therefore, it is difficult for me to screen their radio listening.

American society has a moral obligation to make sure our children have a wholesome environment in order for them to develop into responsible citizens. Today's youth are tomorrow's adults and I would hope WBZZ would improve its morning programming to cultivate and nurture our children to this end. But such is not the case since Jim Quinn recently mentioned on his morning radio program that he and Banana Don are against everything that is decent and morally right.

In closing, I feel Jim Quinn and "Banana" Don Jefferson have run out of wholesome and funny things to say over the air waves and now have to resort to raw and raunchy skits and language to keep its market share.

Sincerely,

John and Barbara Knezovich

P.S. I have telephoned the radio station to complain and to this date, Tex Myer, the General Manager at WBZZ, has not returned my calls.

cc: Tex Myer

112 Lloyd Avenue
Latrobe, PA 15650
January 25, 1988

Mr. Jim Richards
Program Director
WBZZ FM Radio
1715 Grandview Avenue
Pittsburgh, PA 15211

Dear Mr. Richards:

I have been a faithful listener of the Quinn and Banana morning show for many years while driving to work. I have heard many sleazy and obtrusive remarks directed at Liz Randolph, not to mention spots such as "Maurice's Truckstop" fingered at gays that I personally found offensive. I could site other such incidences, but I think my case is well taken. I can overlook much of this, but, the remarks made on Friday, January 22 were absolutely uncalled for and should not be allowed to continue. I would think that Liz would have legal recourse and I would hope she would pursue it further. If this is the type of broadcasting that you as program director condone, then I feel the FCC should step in to clean-up the situation. At this hour of the day there are listeners within an age group that need not hear these sort of comments and I doubt that their parents would appreciate your allowing it to continue.

This morning I was outraged to hear that Mr. Quinn and Mr. Jefferson were broadcasting. Is this station policy to allow this to continue with no repercussion nor reprimand? If so, I shall certainly reprogram my car radio to another station.

Sincerely,


Judy Holden

cc: Tex Myer
Federal Communications Commission
Dan Mallinger, AFTRA

February 22, 1988

Bob Willison
163 N. Springvalley Road
McMurray, PA 15317

Station Manager
WBZZ
1715 Grandview Avenue
Pittsburgh, PA 15211

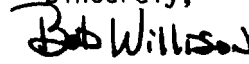
Dear Sir or Madam:

I am writing to express my displeasure with the sexual content and innuendo of some of the material you broadcast. It appears, from reports I have read, your audience is primarily pre-adolescents and teenagers, and this is confirmed for me because my daughter is one of your listeners. As such, I hear some of the comments of your announcers as well as the recorded sections between songs.

First, too much of the material used on your morning program, meant to be humorous, is tasteless, crude, and unnecessary. It encourages a stereotype of homosexual men and substitutes crass comments about AIDS and sexual behavior for what should and could be a more mature approach to these issues.

Another reason for my concern occurred yesterday afternoon. I overheard, between songs, a brief clip from a Rodney Dangerfield album which concerned Mr. Dangerfield's sex life and pickpockets. My daughter asked me to explain the meaning of this "joke" which she didn't understand. I have discussed human sexuality with her in a serious and positive manner. Humor can be a good teaching tool, but your use of it in this manner degrades its position in the lives of the children you serve.

In summary, I obviously have the choice of changing the station to which my daughter listens. While that solves my problem, it doesn't help her discern the insipid from the enlightening, and so my responsibility continues. I only wish you, as a publicly licensed entity, would take more seriously, dare I say, the sociological responsibility you have to your audience. These are impressionable kids and you are doing them a disservice.

Sincerely,

Bob Willison

cc: Federal Communications Commission

Kutub M. Saifee, M.D., F.A.C.S.
PROFESSIONAL CORPORATION
THORACIC-CARDIOVASCULAR SURGERY

CA - 447

ST. CLAIR PROFESSIONAL OFFICE BUILDING
SUITE 203 - 1050 BOWER HILL ROAD
PITTSBURGH, PENNSYLVANIA 15243-1868

TELEPHONE (412) 572-8125

April 14, 1989

Mass Media Bureau - F.C.C.
1919 M. Street Northwest
Washington, D. C. 20554

COMPLAINT -- RE: WBZZ B-94 FM RADIO *Pittsburgh Pa.*

TO WHOM IT MAY CONCERN:

This letter is in protest to the remarks made on radio station WBZZ B-94 FM on April 6th, 1989 between 7:30 a.m. and 7:45 a.m.

The disc jockey on the morning show thought he was being very facetious when he made the statement:

"Khomeini is issuing the first Swim Suit edition of the Quaran"

THIS IS BLASPHEMOUS!!!

I am an American Citizen and proud to be an American citizen. But, I believe that "Freedom of Speech" does not constitute such irreverent remarks uttered against any Holy Book whether it be the Quaran, the Bible, the Torah or other teachings and their related religions. For your information, the Moslem people not only follow the teachings of the Quaran, but also consider the Bible and the Torah as Holy Books.

I do appreciate the letter of apology which was sent from the program director of the station, but I feel very strongly that this apology should be made over the airways on radio where there is a large listening audience who also heard this offensive "joke". Up to the present time, B-94 FM has refused to apologize over the air.

It has been demonstrated in the past that the media has sought to publicly correct their mistakes with other groups. Your attention to this complaint would be greatly appreciated.

Very truly yours,

CC: Mr. G. H.

Kutub M. Saifee
Kutub M. Saifee, M. D.

KMS:jm

AUG 11 1989
M. M. BARKSCHAT
CONTROL SECTION

RECEIVED BY

AUG 11 1989

FCC MAIL BRANCH

Mr. William Barkschat
222 Bronx Ave
Pittsburgh, PA 15229
July 27, 1989

Station Manager
WBZZ B-94FM
1715 Grandview Ave
Pittsburgh, PA 15211

Sir:

I have two daughters who frequently listen to your radio station. Thus, when I am getting ready for work in the morning your station is on the radio when I turn it on for news and entertainment. The sad part is that all too frequently your two morning drive disc jockeys think that they have the right to foist their sexual fantasies and experience on the predominately young adult listening audience. All too often they have banter and skits with sexual innuendo, connotation and outright references. They even seem to encourage the listening audience to call in their "blue" jokes which are broadcast over the air. Apparently management condones this as it seems it has been going on for some time according to past news items.

However, as of Wednesday July 26, no radio in this house will be set to B-94FM. At 707AM that date a recorded skit was played that urged everyone to buy a "Trojan Condo". There was no attempt to disguise the innuendo between a condom and a condominium. This is something for the Night Club Circuit not family radio. I am sending a copy of this letter to the FCC and, to show my displeasure more, I will be sending it to some of your larger advertisers.

copy, FCC

Mr. William Barkschat